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ABSTRACT

This speech by an official of the U.S. Department of Justice reports on the steps that the Department is taking through its Civil Rights Division to enforce the new Fair Housing Act Amendments, and discusses how the Act fosters a cooperative interagency approach to enforcement. Between passage of the Act and its effective date of March 12, 1989, the Division assisted the Department of Housing and Urban Development (HUD) in proposing and promulgating implementation regulations by the deadline laid down in the Act. On the first business day the Act was effective, the Division filed two racial discrimination suits under the Act, a few weeks later filed two pattern or practice cases involving discrimination on the basis of familial status, and most recently filed a suit alleging discrimination on the basis of handicap. One of the familial status cases resulted in a settlement for damages for both the victim and for the fair housing group involved. This award of cash damages to groups involved in testing and fair housing advocacy furthers the work of enforcing the Act and illustrates the new approach to enforcement. Not only can victims in a housing discrimination case brought by the Department of Justice recover monetary damages, but the Department can intervene in private suits as if they had brought the suit as a pattern or practice case. The new Act also creates a much closer relationship between the Justice Department and HUD, fair housing groups, state and local agencies, the private bar, and the Civil Rights Division. (FMW)

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REMARKS BY

JAMES P. TURNER
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE

FIRST ANNUAL CONFERENCE
NATIONAL FAIR HOUSING ALLIANCE

WASHINGTON, D.C.

JUNE 20, 1989

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It is my goal today to report to you on the steps the Department of Justice is taking through its Civil Rights Division, to enforce the new Fair Housing Act Amendments. Before doing so I need to make three preliminary points:

First, I want to congratulate you on the organization of National Fair Housing Alliance and on your very successful first National Conference. Over the last day-and-a-half you have been exposed to an intensive overview of the new Act and the enforcement plans of the Department of Housing and Urban Development and the Department of Justice. This is extraordinarily important work because as a practical matter the fair housing enforcement process begins with <u>complaints</u> - While on occasion such complaints come directly to HUD or to DOJ in the first instance, in communities that have a local fair housing organization like the ones represented here, our experience has been that the enforcement process will begin with a contact with that local organization. Of all the civil rights acts, the Fair Housing Act has probably been the one that is most dependent on local organizational participation - for counseling, legal advice, referral to HUD, testing, etc. As the Supreme Court pointed out in the <u>Trafficante</u> case, "complaints by private persons are the

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primary method of obtaining compliance with the Act."* The Court went on to punctuate the importance of private enforcement efforts by noting that the federal government alone did not have the resources to tackle the enormous problem of discrimination in housing. So it is a pleasure for me to get to meet some of the people recognized by the Supreme Court as the backbone of the fair housing enforcement industry and to take this opportunity to say thank you on behalf of Attorney General Thornburgh, my colleagues at the Department of Justice, the federal government in general and, indeed, citizens of conscience all across the country.

As a second preliminary, as the acting head of the Civil Rights Division I would like to invite you to be sure to meet with members of the staff -- attorney and paralegal -- of our Housing Enforcement Section who are attending many of your meetings. I think most of you know the Chief of that Section, Paul Hancock, who appeared on an earlier program as well as his deputies Joan Magagna and Joe Rich. Please take a minute while you are here to get to know as many of our staff as possible. They are trying extremely hard to build an effective enforcement program; I am very proud of their work.

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*Trafficante v. Metropolitan Life Ins.., 409 U.S. 205, 209 (1972).

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Third, and last, I also appreciate the opportunity to do a little institution-building business on behalf of the Civil Rights Division of the Department of Justice. Over the last few years we have had little opportunity to address mainline civil rights enforcement organizations such as yours. For reasons we need not resurrect, in the last few years the opportunities to have an effective exchange of views have been fairly limited. By participating in the first conference of the National Fair Housing Alliance, and exchanging information on the enforcement of the expansive and exciting new Fair Housing Amendments, it is my hope we can build a relationship among private groups, HUD and the Department of Justice that will be based on sense of mutual trust and commitment.

It has been my pleasure to serve with the Civil Rights Division since 1965 -- back before there was even an inadequate Fair Housing Act. During that period our responsibilities have expanded in incremental bursts -- after the Omnibus Civil Rights Act passed just about 25 years ago in 1964 -- we were given enforcement responsibilities for the Voting Rights Act of 1965, the (first) Fair Housing Act of 1968 and a whole flurry of other acts dealing with the handicapped, gender discrimination and the rights of institutionalized persons. It has been extremely

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gratifying to watch and participate in this enforcement process. As each new problem was addressed by legislation, the men and women of the Civil Rights Division have endeavored to design and mount an effective enforcement strategy. Whether one looks at our record of criminal prosecutions of racial violence and police brutality cases, which is at a new level of both quantity and rate of success, or the steady work of reviewing over 130,000 voting changes for discrimination since 1980, the level of civil rights enforcement is a vigorous one. I am proud of all of the work of my colleagues.

Certainly, this level of activity on issues this sensitive cannot be carried on without controversy. And, we have had our share and, I suspect will continue to be the center of some controversy in the future. But, for present purposes, I come to share with you my observation that President Bush and Attorney General Thornburgh are deeply committed to the full enforcement of the civil rights laws in general and the Fair Housing Act Amendments in particular. Moreover, as one who has spent considerable time with him, I can also report firsthand, that the person designated to become Assistant Attorney General, William Lucas, is just as deeply committed.

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I would now like to review some of the actions we have taken under the new Act. This is a very exciting period. The Fair Housing Amendments Act, compared to the housing discrimination law that we had before, broadened immensely the federal government's powers to enforce the Fair Housing Act.

We in the Civil Rights Division have been working hard since Congress enacted the Amendments. Between passage of the Act and its effective date of March 12, 1989, we assisted HUD in proposing and promulgating implementing regulations by the deadline laid down in the Act. This was a monumental task, and we were certainly impressed with the way HUD went about it. This was one of the final official acts of Secretary Pierce and set the stage for prompt enforcement activities under Secretary Kemp.

On Monday, March 13, the first business day the Act was effective, we filed our first two race discrimination suits under the Act, to serve notice on the country at large that the Justice Department intended to put its new enforcement tools to good use immediately. A few weeks later, we filed our first two pattern or practice cases involving discrimination on the basis of familial status.

I am also happy to announce that we have just this morning

filed our first suit alleging discrimination on the basis of handicap under the new Act. This is a case against the City of Chicago Heights, Illinois. A developer had applied for permission to build a group home for mentally retarded adults. Our suit alleges that at the zoning hearing, prospective neighbors raised all kinds of objections based on fears and prejudices about what effect mentally retarded people might have on the neighborhood. Although a great deal of evidence was available to show that such stereotypical fears are unfounded, that these residents are not dangerous and that the homes do not have adverse effect on their surrounding areas, city authorities unanimously denied the application because of the handicap of the prospective residents. We say that in doing so, they acted on the basis of community prejudice to make a home unavailable to these people in violation of the Fair Housing Act.

One of the familial status cases I mentioned earlier was settled recently, and I'm happy to say that the settlement we obtained included $33,000 in damages for the victim and for the fair housing group that we believe was damaged by the discrimination that occurred. That was the first fruit of our new authority to obtain damages, so that case was what you could call a double first.

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Incidentally, I know that money damages for fair housing groups is a topic of considerable interest for many people here. I understand there has been criticism that it is somehow wrong for damages to be awarded to groups involved in testing and fair housing advocacy; that fair housing groups are shamelessly using the Fair Housing Act to make money for themselves. Let me make clear what the government's interest is in obtaining such relief. We are enforcing this Act on behalf of the United States, and while we intend to ensure that all individual victims of unlawful discrimination are compensated fully, we also have to keep in mind that we are charged with furthering on a nationwide scale the overarching goal of the Fair Housing Act set forth with eloquent simplicity in its very first sentence: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." ** It seems to us that one such way of doing that is to direct punitive awards to private fair housing organizations that will use the funds to further the work of enforcing the Fair Housing Act. This is a good practice -- to fund enforcement with the money of discriminators -- and we intend to use it in cases where it is available.

**42 U.S.C. §3601.

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We think that it is very appropriate for us to obtain this kind of relief in a proper case, because of one of the most striking features about the new Act: The way it breaks down the barriers between different types of enforcement actions.

For example: There used to be two different kinds of housing discrimination lawsuits: private suits, and pattern or practice suits brought by the Justice Department. When we received complaints of discriminatory conduct, we investigated and where we thought it warranted, we would bring a pattern or practice suit. The Civil Rights Division brought more than 400 such cases under the 1968 Act.

We have had to fight long and hard in some of these cases. For example, last week, we filed a brief in the Supreme Court in the Yonkers case. Some of you may have been following that case over the years, and if so, you may recall that we sued the city of Yonkers, New York in 1980. We alleged that the city had deliberately built public housing only in the part of town where blacks lived. We tried the case in 1983 and 1984, and after hearing evidence for more than 90 days, the judge decided in 1985 that he agreed with us. (He also found that we had proved deliberate segregation of the public schools -- but the case is complicated enough without looking at that side of it.)

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One doesn't have to be a Nobel scholar to figure out that the appropriate remedy for restricting black public housing to one part of town was for the court to order the city to build low income housing in white areas and, a little over three years ago, the court agreed, and ordered the city to do just that. The orders were affirmed on appeal and the Supreme Court declined to review the merits of the case. Yet today, the only thing that has been built are legal precedents on contempt and attorneys' fees; ground has yet to be broken on even the first of the new housing.

In the brief we filed last week, we asked the Supreme Court to affirm the lower courts' orders holding individual Yonkers City Council members in contempt and fining them for their defiance of court orders in refusing to vote for legislation needed to make the development of the housing possible. (I should add that the city itself was also held in contempt and paid $820,000 in fines before the Council enacted the legislation, and the Supreme Court has left that order undisturbed.) We have been engaged with Yonkers for almost ten years. I want to let you know that we intend to see this through regardless of how long it takes. There will be effective relief in Yonkers.

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There are, of course, other examples of hard fought cases. But most of the pattern or practice cases we filed under the 1968 Fair Housing Act were settled by consent decrees. A cynic described a consent decree as a document where the defendant denies that it ever discriminated, and promises not to do it any more. What victims of discrimination got out of such consent orders (and even orders in the cases we litigated) was the opportunity to obtain the housing discriminatorily denied and the satisfaction of having helped their fellow citizens. But to obtain monetary compensations for their injuries, victims of discrimination would have had to hire a private lawyer to help get it.

The Fair Housing Amendments change all that. Now, for victims in a housing discrimination case brought by the Justice Department, the law allows us to recover monetary damages. And we believe that includes punitive damages as well. As Attorney General Thornburgh has said, "discrimination now is not only illegal, it's expensive as well." This is one difference between a Justice Department suit and a private suit that doesn't exist any more.

But the change goes further than that. If you look in section 814, at subsection e, you will see that any aggrieved

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person now has a right to intervene in one of our cases. And this also works in the other direction. Section 813(e) says that the Justice Department can intervene in a suit by a private party, and can get the same relief as if it had originally brought the suit as a pattern or practice case. So one kind of suit can turn into the other, and there isn't really a lot of difference between them any more.

The new Act also creates a much closer relationship between the Justice Department and HUD. In the past, when somebody filed a complaint of discrimination with HUD, we were not likely to become involved. Now, as Paul Hancock has described to you, if HUD finds preliminarily that a complaint has merit and the housing the complainant wanted is still available, HUD can authorize us to go to court to seek an order holding the housing until HUD can resolve the complaint. We have obtained such orders in two matters at HUD's request. Both of those, incidentally, were in the Chicago area. In the first of them, the South Suburban Fair Housing Center did testing that was essential to making the case, and in the other -- which we just took to court on Friday -- the Leadership Council was very much involved. So again, while the statute is written in terms of cooperation between HUD and the Justice Department, our

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experience so far shows that the private fair housing groups have an essential role here as well.

We have also been ready to move under this particular provision in a number of other cases, but the respondents have all voluntarily agreed to the temporary relief we wanted. Of course, we think that the respondents made the right decisions at least in part because they learned the Justice Department was about to take them to court. I urge you to keep in mind that HUD and the Justice Department can obtain emergency relief and are willing to do so. But, as in so many other aspects of this enforcement program, we need you to point the way by obtaining reliable facts.

And that is just the beginning of our potential involvement in a complaint that is filed with HUD. Under the new law, when HUD is unable to conciliate a complaint and finds reasonable cause to believe that discrimination has occurred, the case will be adjudicated. If either party does not want to go before an administrative law judge, Justice Department lawyers will take the case to federal court.

We are very excited about these new responsibilities and, clearly, we will need more resources to carry them out properly

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and to continue to bring pattern and practice cases. Over the next two fiscal years we have proposed to more than double the staff of the Housing and Civil Enforcement Section (from 30 to 77 positions) and to triple the Section's budget (from $2 million to $6 million).

I am sure you already know most of the things I have been telling you about what the new Act says. My reason for bringing them up here today is to stress one of the things the new Act means. It means that there isn't any room in fair housing enforcement any more for thinking in terms of "We" and "They." When the old law divided the enforcement effort into more or less isolated compartments, that kind of thinking was probably inevitable. But now HUD, fair housing groups, state and local agencies, the private bar, and the Civil Rights Division are all parts of a single enforcement mechanism, and if the parts don't work together, the machine won't run. If, on the other hand, we all make a coordinated effort, it promises to be so much more effective than the old scheme that I expect to see more progress made toward the elimination of housing discrimination in the next few years than has taken place in all the time since the original Fair Housing Act was passed in 1968.

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Let me close by reminding all of you that the work we are about is truly historical in scope. Fair access to housing has always ranked as one of our basic civil rights. I was privileged to attend the signing of the original Fair Housing Act in April 1968, barely a week after the assassination of Dr. King when fires literally were still smoking in major American cities. In his signing statement President Johnson mentioned that Dr. King had been among those who had urged him to call for a fair housing act in 1966. The President also articulated his vision that the Fair Housing Act marched in the same tradition as the landmark legislation that had preceded it, saying:

> "Now, with this bill, the voice of justice speaks again.
>
> It proclaims that fair housing for all--all human beings who live in this country--is now a part of the American way of life."

Unlike other areas of civil rights law - there is no ideological controversy nor other impediment to such a goal. We have a strong new statute, a public enforcement commitment from both HUD and the Department of Justice and the dedicated efforts of state, local and private entities. This conference can be a big step toward the kind of consensus effort that assures successful enforcement. I hope everyone here will go home with their pockets or handbags filled with business cards and phone numbers from your counterparts in every agency or group that has a role

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to play in enforcing the Act. And I hope you'll use them, and share with one another what you learn about the best ways to make the Act work, and fulfill the promise that Congress has made to the people of this country: No more discrimination in housing. By anyone. Against anyone. Anywhere.

* U.S. Government Printing Office : 1989 - 241-712/00100